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Written statement* submitted by Human Rights Advocates Inc., a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[13 February 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Access to justice for juvenile offenders

Juvenile Justice Theory

Juveniles require different treatment in the justice system. A General Comment on the Convention on Rights of the Child (CRC), the most widely ratified treaty, states that "[j]uveniles have diminished culpability because of their age; because juveniles differ from adults, the rehabilitative goal of punishment is best served through separate juvenile justice systems and penal codes."[1] Scientific studies show that juveniles are different from adults because they have an underdeveloped sense of responsibility; they lack maturity; they are more vulnerable to outside influences; they have not fully formed their character; and they have limited control over their own environment.[2]

Despite international law protecting juveniles, countries continue to violate juveniles' rights when they enter the justice system. The pattern of trying juveniles at a young age, treating them as adults in the justice system, and sentencing juveniles to extreme punishments that lack a rehabilitative purpose violates the human rights of individual juveniles. Human Rights Advocates urges the Council to urge enforcement of the international laws protecting juveniles.

Juvenile Death Penalty

Sentencing and carrying out the juvenile death penalty violates article 6 of the ICCPR and article 37(a) of the CRC. Iran[3] and Saudi Arabia[4] are the only countries that carry out juvenile death penalty sentences. HRA urges that they stop sentencing and carrying out juvenile death penalty sentences and amend their laws to prohibit juvenile executions.

Maldives is set to resume executions after a sixty-year moratorium.[5] There are two juveniles on death row, and their sentences must be communed to comply with international law.[6]

Discrepancies in determining an offender's age at the time of the offense could lead to juvenile executions. Yemen signed international treaties and passed legislation banning the juvenile death penalty, but continues to sentence and carry out death penalty sentences despite conflicting evidence that the offender was under 18 at the time of the crime.[7] This has also been an issue in Sudan.[8] Authorities in these countries must provide safeguards against executing juveniles.

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[1] Committee on Rights of the Child, General Comment No. 10: Children's Rights in Juvenile Justice, para. 10, UN Doc. CRC/C/GC/10 (April 25, 2007).

[2] The United States Supreme Court found these studies relevant. *Miller v. Alabama* (2012) 132 S.Ct. 2455, 2464-2465

[3] Amnesty International, Iran Executes Alleged Juvenile Offender (Jan., 18, 2013).

[4] Amnesty International, Five Reasons why Saudi Arabia Must Urgently Abolish the Death Penalty (2013).

[5] Amnesty International, Maldives: Halt "retrograde" move to resume executions (January 2014).

[6] Amnesty International, Maldives Must Commute Death Sentences for Two Juvenile Offenders Convicted of Murder (May 2013).

[7] Human Rights Watch, Look at us with a Merciful Eye: Juvenile Offenders Awaiting Execution in Yemen (March 2013).

[8] Death Penalty Worldwide, Sudan (2012).

The United States retains its reservation to the International Covenant on Civil and Political Rights (ICCPR) article 6(5), which bans the juvenile death penalty, despite a Supreme Court opinion banning the juvenile death penalty.[9] This reservation should be removed.

Long Juvenile Sentencing

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) state that the guiding factor in deciding a juvenile's case is their well-being.[10] Institutionalization is a last resort, and should only be for the minimum necessary period.[11] The CRC reflects this language in articles 37(a), which expressly forbids sentencing juveniles to life without parole (LWOP); 37(b), which states, "the arrest, detention or imprisonment of a child . . . shall be used only as a measure of last resort and for the shortest appropriate period of time;" and 40, which governs the administration of juvenile justice.

The juvenile life without parole (JLWOP) categorical ban is a *jus cogens* norm. Eight countries still have laws that allow JLWOP, but there are no known cases of the sentence being imposed.[12] Zambia, Sierra Leone, Fiji and Tonga have ambiguous laws, but there is no evidence of JLWOP sentences being imposed.[13] The only country in the world that currently imposes JLWOP is the United States. [14]

The United States limited JLWOP sentencing in *Miller v. Alabama*,[15] which held that the courts must consider the age and circumstances of the juvenile, and in *Graham v. Florida*, which held no JLWOP for non-homicide crimes.[16] Massachusetts has banned JLWOP sentences. [17] But until all states or the federal government ban JLWOP, the United States will continue to violate international law.

De facto JLWOP happens when a juvenile is sentenced to a period of time that is so long that is amounts to life without parole.[18] As countries move away from sentencing JLWOP, they should be monitored for de facto JLWOP sentences. Of 164 countries surveyed, 127 (78%) have determinate sentences for juveniles and 92 (56%) have determinate sentences that are 25 years or less for juveniles.[19] HRA commends countries that place caps on juvenile sentences to avoid de facto JLWOP, and we encourage countries to follow the trend of setting lower determinate sentences for juveniles.

Transfer of Juveniles to Adult Court

Juveniles must be treated differently than adults. The Committee on the CRC states "[t]he rehabilitative goal of punishment is best served through separate juvenile justice systems and penal codes."[20] ICCPR article 10(5) requires consideration of a juvenile's age, rehabilitation, and segregation from adults.

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[9] U.S. reservations, declarations, and understandings, International Covenant on Civil and Political Rights, 138 Cong. Rec. S4781-01 (daily ed., April 2, 1992).

[10] United Nations Standard Minimum Rules for the Administration of Juvenile Justice at 17.1(d).

[11] Id. at 19.1.

[12] Connie de la Vega & Michelle Leighton, Sentencing Our Children to Die in Prison: Global Law and Practice, 42 U.S.F.L. Rev. 983, 990 (2008)(Countries: Antigua and Barbuda, Argentina, Australia, Cuba, Dominica, Saint Vincent and the Grenadines, the Solomon Islands, and Sri Lanka).

[13] Ibid.

[14] Ibid.

[15] *Miller*, *supra* note 2.

[16] *Graham v. Florida* (2010) 560 U.S. 48.

[17] *Diatchenko v. District Attorney for Dist.* (2013) 466 Mass. 655.

[18] Connie de la Vega, Amanda Solter, Soo-Ryun Kwon & Dana Marie Isaac, Cruel and Unusual: U.S. Sentencing Practices in a Global Context, 60 (2012).

[19] Id. at p. 58.

[20] CRC General Comment No. 10; *supra* note 1 at para. 10.

The United States put a reservation on the ICCPR reserving the right, "*in exceptional circumstances*, to treat juveniles as adults."[21] There are an estimated 250,000 juveniles that are tried, sentenced or incarcerated as adults per year in the United States.[22] This indicates an institutionalized practice of transferring juveniles to adult court in the United States, not just exceptional circumstances cases. The United States needs to ensure and urge that its states severely restrict or eliminate entirely the transfer of juveniles to adult court.

While it is ideal to create a separate system entirely for juveniles, some countries have created separate penal codes that are applied to juveniles even when they are in adult court.[23] Croatia[24] and Japan[25] allow juveniles to be tried in adult court, but the juvenile code still applies. Georgia[26] and Iceland[27] do not have juvenile courts, but additional protections apply to juveniles. HRA commends these countries for their efforts to treat juveniles differently.

Minimum Age of Criminal Responsibility (MACR)

Article 40(3)(a) of the CRC states that countries must establish a MACR below which juveniles are presumed not to have the capacity to commit a crime. The Committee on the CRC set twelve years as the absolute minimum age, with the goal of increasing to fourteen or sixteen.[28] There are no exceptions for setting the MACR below twelve.[29]

Some countries continue to hold juveniles below the age of twelve criminally responsible.[30] Iran's penal code was updated in 2012; article 147 stipulates the MACR at nine years for girls and fifteen years for boys as required by Islamic *Shari'a*.[31] Not only does the MACR for girls violate Article 40 of the CRC, but it discriminates based on gender in violation of CRC Article 2. Iran must increase the MACR for girls to match that for boys to comply with its CRC obligations.

Human Rights Advocates recommends that the Council urge state parties:

1. To recognize the special legal status of juveniles;
2. To stop sentencing and carrying out the juvenile death penalty;
3. To stop the practice of extreme sentencing for juveniles, including JLWOP and *de facto* JLWOP;
4. To stop the practice of transferring juveniles to adult court to be tried, sentenced, and imprisoned without additional protections that account for their status as juveniles; and
5. To require a MACR of twelve or greater.

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[21] U.S. reservations, *supra* note 9, emphasis added.
[22] Campaign for Youth Justice, Key Facts: Youth in the Justice System, April 2012.
[23] Cruel and Unusual, *supra* note 18 at p. 56.
[24] Juvenile Courts Act, art. 60.
[25] Juvenile Act, Act No. 168 of 1948, art. 20.
[26] Code of Criminal Procedure, arts. 640, 641, 654; Criminal Code, art. 89.
[27] U.N. ESCPR, 30th Sess., 16th mtg., U.N. Doc. E/C. 12/2003/SR. 16, May 26, 2003.
[28] CRC General Comment No. 10, *supra* note 1, at para. 32 and 33.
[29] Id. at para. 34.
[30] Cruel and Unusual, *supra* note 18 at p. 51-52.
[31] Iran Human Rights Documentation Center, Gender Inequality and Discrimination: The Case of Iranian Women (2013).